# Appendix A

## Federal Rules of Civil Procedure

**Rule 8(f):**

**Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

**Rule 15(a):**

**Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

**Rule 16: Pre-Trial Procedure and Formulating Issues**

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

**Rules of the United States Supreme Court**

**Rule 19:**

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of

appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

# Appendix B

## Memorandum Order and Decision of the Hon. Herbert F. Croake, U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

66-Civ. 1735

WEST PUBLISHING COMPANY,

*Plaintiff,*

*v.*

LAW RESEARCH SERVICE, INC., ELLIAS C. HOPPENFELD and PAUL WIENER,

*Defendants.*

Appearances:

WHITE & CASE
Attorneys for Plaintiff
14 Wall Street
New York, N. Y. 10005
By: William D. Conwell, Esq.
Of Counsel

LEIBOWITT, MILBERG, WEISS & FOX
Attorneys for Defendants
2 Pennsylvania Plaza
New York, N. Y. 10001
By: Martin Fox, Esq.
Of Counsel

CROAKE, D. J.

Plaintiff alleges in this action that defendants have infringed numerous of plaintiff's copyrights and committed acts of unfair competition in connection with an alleged computerized legal research service they sell. Plaintiff has brought on the instant motion before the undersigned for an order pursuant to Federal Rules of Civil Procedure 15, 16, and 21, joining Computer Searching Services Corporation as a defendant in this action, amending the Pretrial Order, and granting plaintiff leave to serve and file a Second Amended and Supplemental Complaint and Amended Reply.

In support of its motion, plaintiff argues that Computer Searching Services Corporation is a recently formed wholly owned subsidiary of defendant Law Research Service, Inc., and has taken over or is threatening to take over the infringing acts of the said named defendant. Plaintiff also seeks to assert the defense of collateral estoppel in the Reply because of a recent decision in an action by Law Research Service, Inc., against Western Union to which plaintiff was not a party.

It is clear that plaintiff seeks by this motion only to add a claim that *if* defendants have transferred to a controlled subsidiary, Computer Searching Services Corporation, any of the alleged infringing material which forms the subject of this suit, then that subsidiary should be joined as a party defendant, so that if plaintiff should win on the trial of the merits an order could be entered enjoining that subsidiary as well as the presently named defendants from such infringing activities. The merits of the infringements claims are not raised herein, nor are they at all considered by the undersigned on this motion.

After considering the papers submitted and hearing oral argument, we have concluded that joinder of the Computer Searching Services Corporation is proper and, in

fact, necessary in the interests of justice under Rules 19, 20 and 21 of the Federal Rules of Civil Procedure. It is clear that plaintiff's claim against the subsidiary arises from the same occurrences and transactions and presents the same issues of law and fact as its claim against the named defendants. Joinder of the subsidiary is essential to protection of plaintiff's rights in this action since the injunctive relief which plaintiff seeks against the named defendants would be of little value if the facts proved at trial should show that the latter have transferred the infringing activities to the subsidiary. We note that this joinder raises no new issues except as to what was transferred to the subsidiary—matters which are certainly within the knowledge of defendants.

Secondly, leave is granted to the plaintiff to assert collateral estoppel on the basis of a decision made subsequently to the entry of the Pretrial Order. We note that defendants were certainly on notice that this matter would be raised since the Pretrial Order did indicate the pendency of that matter which was subsequently decided, as well as of numerous other matters, the determination of which might serve to expedite this action if collateral estoppel should be found applicable.

Accordingly, plaintiff's motion is granted in its entirety.

So Ordered.

Dated: New York, N. Y.
August 3, 1970

/s/ Thomas F. Croake

Thomas F. Croake
U. S. D. J.

# Appendix C

## Second Amended and Supplemental Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

66 Civ. 1735

WEST PUBLISHING COMPANY,

*Plaintiff,*

*against*

LAW RESEARCH SERVICE, INC., ELLIAS C. HOPPENFELD, PAUL WIENER and COMPUTER SEARCHING SERVICE CORPORATION,

*Defendants.*

Plaintiff alleges:

*As and for a First Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

1. Plaintiff is a Minnesota corporation having its principal place of business at 50 West Kellogg Boulevard, Saint Paul, Minnesota.

2. Upon information and belief, defendant Law Research, Inc. (hereinafter "Law Research") is a New York corporation with its principal place of business at 60 Hudson Street, New York, New York.

3. Upon information and belief, defendant Ellias C. Hoppenfeld is president and a director of defendant Law Research.

4. Upon information and belief, defendant Paul Wiener is secretary-treasurer and a director of defendant Law Research.

5. This action arises under the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and related claims of unfair competition and under §43 of the Lanham Act, 15 U.S.C. §1121. Jurisdiction is conferred on this court by 17 U.S.C. §112, 28 U.S.C. §1338 and 15 U.S.C. §1121. Jurisdiction is also based on diversity of citizenship because, upon information and belief, neither the individual defendants nor the corporate defendant Law Research are citizens of Minnesota, the state of incorporation and principal place of business of plaintiff. The matter in controversy exceeds the sum of $10,000 exclusive of interest and costs.

6. Plaintiff has prepared and published numerous books, pamphlets and other materials for the legal profession. These materials constitute an important source for finding applicable rules of law in this country.

7. The books published by plaintiff (not including those published by plaintiff jointly with others) include: (1) Sets of reporters called the National Reporter System such as the Federal Reporter and New York Supplement which contain the actual text of judicial decisions plus editorial and other material prepared and compiled by plaintiff; (2) Sets of annotated statutes such as the United States Code Annotated containing the actual text of statutes plus annotations and other materials prepared and compiled by plaintiff; (3) Sets of digest containing summaries of the law of various jurisdictions and courts prepared and compiled by plaintiff; (4) reference works such as Corpus Juris Secundum and Words & Phrases containing editorial mate-

rial prepared by plaintiff; and (5) numerous treatises and text books.

8. As soon as a case is decided a copy of the court's opinion is mailed to West where it is studied and analyzed by the West Editorial Staff composed entirely of lawyers. These lawyers prepare a synopsis of each case and headnotes which briefly state the facts and the rule of law applied for each point decided. The headnotes are then classified by topic (*i.e.*, subject matter) and Key Number in accordance with a system of classification originated and developed by plaintiff known as the West Key Number System.

9. Opinions are then published in weekly advance sheets and subsequently in bound volumes of the various West reporters.

10. Each bound volume and advance sheet included in the National Reporter System contains, in addition to the texts of judicial opinions as verified by West, synopses prepared by West, headnotes prepared, classified by topic and Key Number by West and the attorneys' names and addresses. They also contain the following material compiled by West; a Table of Cases Reported; a Table of Statutes Construed; a Table of the Federal Rules of Civil and Criminal Procedure; a Table of Words & Phrases; and a Key Number Digest index to the cases reported in that volume or advance sheet. The advance sheets contain a synopsis of Recent Federal Cases, Judicial Highlights and Rehearing Tables. The bound volumes contain a Table of Cases reported by State and a list of all judges sitting in the courts of the jurisdiction covered by that Reporter.

*Appendix C*

*Key Number Digests and Descriptive Word Indexes*

11. As an aid in meeting the problem of locating cases pertinent to particular points of law from the mass of reported decisions, West developed over the years a method of summarizing, classifying and indexing the decided cases by subject matter. These indexes are published as West Key Number Digests.

12. West's expert legal staff digests each case by preparing one-paragraph summaries which state the facts and the holding for every point of law in the opinion. Each such summary paragraph is then classified under the appropriate Digest Topic heading (of which there are over 400 in the West System) and within that Topic heading under the appropriate Key Number subdivision.

13. The resulting Digest is thus a compilation of summaries of cases prepared by West, with subsequent case history added by West, indexed by Topic and Key Number in accordance with a classification scheme originated and continually updated and modified by West.

14. To enable lawyers to find the appropriate Digest Topic heading and Key Number sub-heading, West publishes volumes known as Descriptive Word Indexes which accompany each Digest, except the District of Columbia Digest and the Alaska Digest.

15. To make up the Descriptive Word Index volumes, West's legal staff selects from each decision, words which are descriptive of the important facts and legal principals in that case. These descriptive words are then arranged alphabetically and a reference is supplied to the Topic and Key Number where citations and summaries of cases in-

volved similar facts and points of law are contained in that Digest.

16. Each digest also contains a Table of Cases, which gives the title of the case, its procedural history, parallel citations to appropriate reporters and the Topics and Key Numbers under which that case has been classified in the Digest System. Each Digest volume has an index of the Topics and Key Numbers covered therein.

*Annotated Statutes*

17. In addition to reporters and digests of case law, West publishes annotated statutes which include, in addition to the official text of each statute, such editorial features supplied by West as synopsis paragraphs of all cases construing the statutes classified by subject matter within each statute; and analysis or index of the paragraphs under each statute; Indexes and Popular Name Tables, Historical Notes and references to legislative history; cross references to related statutes; and references to West Digest Topics and Key Numbers.

18. The works described in the foregoing paragraphs 6 to and including 17 hereof and not including any works published by plaintiff jointly with others, contain a large amount of material created by and wholly original with plaintiff which is copyrightable subject matter under the laws of the United States.

19. In respect of each of such works (described in paragraphs 6 to and including 17 hereof) plaintiff, which has at all times been a citizen of the United States, has complied with the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright and secured the exclusive rights and privileges in and to the copyright

of such materials and received from the Register of Copyrights certificates of registration of such copyrights.

20. All such works have been published by plaintiff and all copies of them made by plaintiff or under its authority or license have been printed, bound and published in conformity with the provisions of the Copyright Act, 17 U.S.C. §1 *et seq.* and all other laws governing copyright.

21. Plaintiff has been at all times and still is the sole proprietor of all rights, title and interest in and to the copyright in said works except for some situations in which it is a joint proprietor.

22. The foregoing publications and each of them represent an enormous amount of time-consuming work and professional skill. The publications copyrighted by West are relied upon by lawyers and judges throughout the country. The work done by West and its staff throughout the years has been of incalculable benefit to our country by making readily and accurately accessible applicable precedents and laws to the legal profession, courts, legislatures and other interested parties.

23. Defendants offer and sell a service which purports to do legal research by use of a computer.

24. Defendants offer their service to lawyers pursuant to subscription agreements. Upon information and belief defendants are represented in some areas by persons or firms known as "directors" who are franchisees of Law Research authorized to sell its service.

25. Upon information and belief, defendants supplied their customers, subscribers and franchisees with volumes known as Thesauri. These Thesauri are in essence indexes

of works or headings identifying and indexing legal topics. A number is assigned to each word or heading. These Thesauri are used by the researcher (subscriber or franchisee) to locate the topic and number pertinent to his inquiry.

26. Upon information and belief, defendants have printed onto tapes or drums for use in computers, citations to cases and other legal material keyed to the numbers assigned words in their Thesauri.

27. Upon information and belief, defendants' computer when given a number from a Thesauri prints out citations of cases identified by the number as relevant to the Thesaurus Topic with which it is associated.

28. Upon information and belief, defendants copied in whole or substantial part from individual works created and copyrighted by West; such copies are contained in the Thesauri published by defendants, the index of cases prepared by them to put into the computer, the material stored therein and the material printed out by the computer in response to inquiries and elsewhere.

29. West has not as yet had an opportunity to inspect the materials printed by defendants into the computer or to see any substantial number of its printouts to subscribers and therefore does not at the present time have sufficient knowledge or information to specify in complete detail, each of its copyrighted works which it believes defendants copied.

30. Upon information and belief, defendants have and unless enjoined, will continue to copy and pirate West's copyrighted works.

31. Upon information and belief defendants continued to copy West's copyrighted works even after the present action was instituted.

*As and for a Second Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

32. Plaintiff repeats each and every allegation of paragraphs 1 to 31 herein.

33. Since at least some time in 1967 in connection with their business as above described, defendants have published and sold volumes called Computer Thesauri for the State of California. There is a separate computer Thesaurus for the California laws relating to various topics.

34. These Thesauri consist of words and phrases arranged alphabetically under headings with a number assigned to each word or phrase.

35. In 1951 plaintiff published a work known as West's California Digest, 3 volumes of which are entitled "Descriptive Word Index." West's Editorial Staff read and analyzed each case decided by the California Courts and prepared summaries or headnotes for each such case; the Descriptive Word Indexes contain words selected from each decision descriptive of the important facts in each case; it arranges them alphabetically with references to Topic and Key Number where citations and summaries of cases involving similar facts and points of law are contained in other volumes of the Digest.

36. Said California Digest and the Descriptive Word Index thereto have been supplemented each year by pamphlets known as "Pocket Parts." Volumes have been

recompiled from time to time to incorporate the pocket part and additional material and to eliminate superseded material.

37. Said California Digest, Descriptive Word Index and supplementary pocket parts and recompiled volumes are written, created and compiled solely by plaintiff and are copyrightable subject matter under the laws of the United States.

38. In respect of said works described in paragraphs 35 to 37 plaintiff complied in all respects with the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright and secured the exclusive rights and privileges in and to the copyright of such materials and received from the Register of Copyright, certificates of registration.

39. Said works have been published by plaintiff and all copies made by plaintiff or under its authority or license have been printed, bound and published in conformity with the provisions of the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright.

40. Since 1951 plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright of said works.

41. Upon information and belief, beginning some time during the 1960s and continuing to date defendants Law Research, Hoppenfeld and Wiener infringed and continue to infringe plaintiff's copyrights in said California Digest and Descriptive Word Index and pocket parts thereto, by copying a substantial part of said Digest and Descriptive Word Index in the production and publication of the California Thesauri volumes published by them.

*Appendix C*

*As and for a Third Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

42. Realleges each and every allegation in paragraphs 1 to 41 hereof.

43. Upon information and belief defendants have also copied the case citations compiled by West and other editorial material contained in said Digests in its in-put, on punch cards, tapes or drums for storage in a computer and in its printouts to subscribers in violation of the Copyright Law.

*As and for a Fourth Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

44. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 31 herein.

45. Prior to August 30, 1960 plaintiff who then was and ever since has been a citizen of the United States created and wrote various original materials which appear in books entitled "Modern Federal Practice Digest."

46. West's expert legal staff summarized federal cases pertaining to practice, organized and compiled them. Thus these books contain a large amount of material wholly original with plaintiff which is copyrightable subject matter under the laws of the United States.

47. From August 31, 1960 plaintiff complied in all respects with the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright and secured the exclusive rights and privileges in and to the copyright of such materials and received from the Register of Copyrights a certificate of registration of copyright in said Modern Federal Practice Digest.

48. Since August 31, 1960 said books have been published by plaintiff and all copies of them made by plaintiff or under its authority or license have been printed, bound and published in conformity with the provisions of the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright.

49. Since August 31, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said books.

50. Upon information and belief, after August 31, 1960 defendants through their operation of a legal research assistance service infringed and have continued to infringe plaintiff's copyright in said works by copying said material or a substantial part thereof into a computer and printing out copies to subscribers. Unless enjoined, defendants will continue to do so.

*As and for a Fifth Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

51. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 31 herein.

52. Plaintiff, who is a citizen of the United States, created and wrote various original materials which appear in a set of books entitled "New York Supplement 2d" in that, *inter alia,* it summarized the rules of law applied in each decision and printed a synopsis of each case, headnotes containing the summaries and the key number index and classification for each case.

53. These books contain a large amount of material wholly original with plaintiff which is copyrightable subject matter under the laws of the United States. Plaintiff

complied in all respects with the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright and secured the exclusive rights and privileges in and to the copyright of such materials and received from the Register of Copyrights, a certificate of registration of copyright in this work.

54. Said set of books has been published by plaintiff and all copies of them made by plaintiff or under its authority or license have been printed, bound and published in conformity with the provisions of the Copyright Act of 1909, as amended, 17 U.S.C. §1 *et seq.* and all other laws governing copyright.

55. Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said books. These volumes contain headnotes to judicial opinions and synopses containing summaries of the opinions keyed to West's Key Number System. These summaries and synopses are the work product of the West Editorial Staff and constitute copyrightable material.

56. Upon information and belief after January 1960 defendants have infringed and continue to infringe said copyright by copying a substantial part of said copyrighted materials.

*As and for a Sixth Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

57. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 31 herein.

58. Upon information and belief defendants purport and represent they have independently read, summarized and indexed the law of many jurisdictions and on many subjects and that on the basis of such independent research,

summarizing and indexing they have prepared computer Thesauri by means of which inquiries can be identified by subject matter and have stored citations and data pertinent to such subject matter or word headings in their computer.

59. Upon information and belief such representations are false and misleading since defendants did not read, summarize and index all the legal materials stored in their computer or referred to in the Thesauri published by them but rather copied such summaries, indexes and other material from works created and copyrighted by plaintiff and others. Upon information and belief defendants did not independently classify and group citations but copied the classifications and groupings prepared by West and by others.

60. Defendants purport and represent that they have developed a novel and original method of legal research by means of a computer which method is more comprehensive, faster, more economical and at least as accurate as existing methods of research by use of printed material.

61. Such representations are false and misleading because defendants fail to disclose the material fact that what they have transcribed into the computer and into their Thesauri is no more than a copy of materials published and sold by West or others, and that their service is consequently no more than a piece-meal and sometimes inaccurate print-out of citations classified, grouped and printed in such publications.

62. Defendants' misleading statements, misrepresentations and failure to disclose material facts have and is likely to continue to deceive and mislead (1) members of the legal profession into subscribing to their service in the belief that it provides information in more detail, more quickly, as accurately and less expensively than plaintiff's

books where the same information is in fact contained in more complete form and in greater detail; (2) distributor franchisees into entering into contracts with defendants in the belief that defendants' service is and will be of great value to the legal profession because it offers a more advanced or better means of conducting legal research than those employed hitherto; (3) members of the general public into purchasing stock, loaning money, furnishing services, or doing business with Law Research under a false impression as to the value of its service.

63. By falsely representing to the public that their service, which is offered and sold in interstate commerce, is their own and was created and developed by them, when in fact it was copied from plaintiff, defendants have violated §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

64. These false representations cause or are likely to cause injury to plaintiff's good will, reputation and the sales of its books by misleading and deceiving lawyers and others into subscribing to defendants' service instead of purchasing plaintiff's publications. Furthermore the actions of defendants are a severe disservice to the legal profession in this country.

*As and for a Seventh Cause of Action Against Defendants Law Research, Hoppenfeld and Wiener*

65. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 64 herein.

66. Defendants by copying substantial parts of plaintiff's copyrighted works in connection with their computer legal research service have committed and continue to commit acts of unfair competition causing plaintiff irreparable damage for which it has no adequate remedy at law.

*Appendix C*

*As and for an Eighth Cause of Action Against Defendants Law Research, Hoppenfeld, Wiener and Computer Searching Service Corporation*

67. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 66 herein.

68. Upon information and belief defendant Computer Searching Service Corporation (hereafter "CSSC") is a Delaware corporation doing business in New York and having its principal place of business in that state at 60 Hudson Street, New York, New York.

69. Upon information and belief CSSC was formed by defendant Law Research during the year 1969 and at all times since its formation has been controlled and wholly or majority owned by Law Research.

70. Upon information and belief defendant Paul Wiener is president of CSSC.

71. Upon information and belief Law Research in about November 1969 transferred to CSSC magnetic tapes and other materials (including but not limited to Thesauri, printouts and punch cards) alleged in Paragraphs 23 through 56 above to infringe plaintiff's copyrights. Such materials together with any additional materials which CSSC has produced or may in the future produce by copying plaintiff's works infringe the copyrights of plaintiff as alleged in Paragraphs 1 through 56 herein.

72. Upon information and belief CSSC has engaged since its formation or intends to engage in substantially the same business and activities as those engaged in by Law Research and described in Paragraphs 23 through 66 herein. Upon information and belief the same acts of copyright in-

fringement and unfair competition alleged in Paragraphs 1 through 66 herein to have been committed by defendants Law Research, Hoppenfeld and Wiener are also being committed or are threatening to be committed by CSSC.

WHEREFORE, plaintiff demands:

1. That defendants Law Research, Hoppenfeld, Wiener and CSSC, their agents and servants, subsidiaries, successors and assigns be permanently enjoined from infringing any and all copyrights of plaintiff in any manner and from committing acts of unfair competition.

2. That defendants Law Research, Hoppenfeld, Wiener and CSSC be required to pay to plaintiff such special damages as plaintiff has sustained on consequence of defendants' infringement of plaintiff's copyrights and said acts of unfair competition and to account for (a) all gains, profits and advantages derived by defendants by said acts of unfair competition; and (b) all gains, profits and advantages derived by defendants from their infringements of plaintiff's copyrights or such damages as to the court shall appear proper within the provisions of the Copyright Act, but not less than $250 for each act of infringement.

3. That defendants Law Research, Hoppenfeld, Wiener and CSSC be required to deliver up to be impounded all infringing materials in their possession or under their control and to deliver up for destruction all infringing materials and all objects, machines or devices for making such infringing materials.

4. That defendants Law Research, Hoppenfeld, Wiener and CSSC pay the plaintiff the costs of this action and reasonable attorneys' fees to be allowed to plaintiff by this court.

5. That defendants Law Research, Hoppenfeld, Wiener and CSSC be required to pay to plaintiff by reason of their wilful and fraudulent acts, exemplary and punitive damages in the sum of $10,000,000.

6. That plaintiff have such other and further relief as is just.

Dated: New York, New York
August 11, 1970

WHITE & CASE

By MACDONALD FLINN /s/

A Member
Attorneys for Plaintiff
14 Wall Street
New York, N.Y. 10005

# Appendix D

## Answer and Counterclaims to the Second Amended and Supplemental Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

66 Civ. 1735

WEST PUBLISHING COMPANY,

*Plaintiff,*

*against*

LAW RESEARCH SERVICE, INC., ELLIAS C. HOPPENFELD, PAUL WIENER and COMPUTER SEARCHING SERVICE CORPORATION,

*Defendants.*

Defendant Demands a Trial by Jury

Defendant Computer Searching Service Corporation, by its attorney, Alvin I. Apfelberg, for its answer and counterclaims to the second amended and supplemental complaint herein, allege as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 45, 46, 52.

2. Defendant upon information and belief denies the allegations contained in paragraphs 19, 20, 28, 29, 30, 31, 41, 43, 47, 48, 49, 50, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 66.

3. Defendant denies each and every allegation contained in paragraphs 68, 69, 71, 72.

4. Defendant admits that Paul Wiener is president of Computer Searching Service Corporation and secretary-treasurer of Law Research Service, Inc.

5. Defendant repeats and realleges each and every allegation with reference to paragraphs 32, 42, 44, 51, 57, 65, 67.

6. Defendant denies all other allegations other than those specifically admitted or denied herein.

*As and for an Affirmative Defense and as and for a First Counterclaim*

7. Defendant Computer Searching Service Corporation will be hereinafter referred to as "Plaintiff".

*Jurisdiction*

8. The causes of action herein arise under 15 United States Code Annotated, Sections 1 and 2, hereinafter called "Sherman Act" and under 15 United States Code Annotated, Sections 15 and 26, hereinafter called "Clayton Act", all as amended.

9. Plaintiff Computer Searching Service Corp. (hereinafter: CSSC) maintains an office for the transaction of business in the State of New Jersey.

10. Certain defendants transact business and have performed the activities hereinafter complained of within the Southern District of New York and certain defendants maintain offices within the Southern District of New York, all of the aforesaid constituting proper venue within the Southern District of New York.

## *Appendix D*

*Class Action Allegations of Plaintiff Computer Searching Service Corp.*

11. Plaintiff brings this action as a Class Action pursuant to F.R.C.P. 23 (b) (1) (A) and F.R.C.P. 23 (b) (3).

12. Plaintiff CSSC and other members of the Class of plaintiffs are individuals and entities, including but not limited to, lawyers, librarians, accountants, local, state and federal governmental bodies and agencies, schools, courts, wholesalers and retailers, and all other purchasers of every description who purchase primarily or secondarily from the defendants and all companies who publish and print law books of every description, which include but are not limited to, decisional reports, digests, services, encyclopedias, compilations of statutes and cases, dictionaries, and all books and periodicals published from time to time, used in connection with the legal profession and legal research manually or by computer.

13. Members of the Class on whose behalf this action is brought are divided into two subdivisions:

(a) All computer oriented entities and computer research bureaus located throughout the territorial limits of the United States; many unknown to the named plaintiffs and unaware that causes of action on their behalf exist or have been brought and/or unaware of facts giving rise to this action.

(b) Lawyers, librarians, accountants and other persons and entities, being in excess of one hundred thousand persons, located throughout the territorial limits of the United States; many unknown to the named plaintiffs and unaware that causes of action on their behalf exist or have been brought and/or unaware of facts giving rise to this action. It is impracticable to bring them all before this Court.

14. The named plaintiff will fairly insure adequate representation of interests of all members of the Class. It is a corporation involved in the computerized application and it has a thorough understanding and knowledge of the computerization of the law as well as the need to rely upon the legal material for the creation of a complete and total computerized law library. The named plaintiff has no interests which are hostile to any members of the Class and represents the Class.

15. There are questions of law and fact common to the Class, i.e. The sales practices of defendants alleged; the concerted agreements amongst defendants to refrain from competition; the actions of defendants to prevent the introduction of new compilers and publishers into competition, or computer oriented law applications; the retention of excessive prices; the plan and agreements to reduce the markets and values of used law books; the plan and agreements to injure dealers; and whether such actions constitute violations of the acts herein and should be eliminated and damages granted.

*Class Action Allegations of Defendants*

16. (a) Plaintiffs have no knowledge that any member of either the Class of plaintiffs or defendants have an interest in individually controlling prosecution of separate actions.

(b) Plaintiffs know of no other litigation concerning this controversy already commenced by or against members of the Class except an action entitled Claitor, et al. v. West Publishing Co., et al., 70 Civil 1925, in which certain book dealers commenced an action against three publishers upon the grounds that said publishers were causing trade damages to such dealers, and an action by James A. Geller, et al. v. Matthew Bender & Co., Inc., et al., 70 Civil 1978,

in which an attorney commenced an action against various publishers in violation of the "Sherman Act" and "Clayton Act".

(c) In order to obtain consistent results and because the majority of newly published law books are utilized within the Southern District of New York and because the named defendants maintain offices in and near to said district and because the volume of alleged violations take place therein, it is desirable to concentrate this litigation in this District.

(d) Plaintiffs know of no difficulty likely to be encountered in the management of this Class Action.

17. The named defendants are the major leading publishers, compilers, printers and primary distributors of books utilized in the legal profession and legal research. As such, they are true and proper representatives of a Class of defendants which includes all other entities engaged in the same activities, including but not limited to, affiliates and subsidiaries of named defendants and others, many unknown to plaintiffs. It is impracticable to bring before this Court all members of the Class of defendants since such Class consists of approximately ten (10) entities located throughout the territorial limits of the United States. The named defendants will fairly insure adequate representation of the interests of all of the members of the Class of defendants. In connection with the causes of action herein, the named defendants have no interest which are hostile to any members of the Class of defendants. Because of their position as the industry leaders, the named defendants will defend themselves and as such, represent all members of the Class in the same manner. There are questions of law and fact common to the Class of defendants and the defenses of the named defendants are typical of defenses of the entire Class as set forth in paragraph hereof.

18. Reference to "defendants" in this complaint shall mean the named defendant and all members of the Class of defendants.

*Defendant and Its Subsidiaries*

19. West Publishing Company, is a Minnesota Corporation, with its principal place of business in Saint Paul, Minnesota.

20. Edward Thompson Co., Inc., is a New York Corporation, with its principal place of business in Nassau County, New York and is a wholly owned subsidiary of West Publishing Company.

21. Soney & Sage, Inc., is a New Jersey Corporation, with its principal place of business in Newark, New Jersey and is wholly or substantially owned by West Publishing Company.

21(a). Boston Law Book Co., is a Massachusetts Corporation, with its principal place of business in Boston, Massachusetts and is wholly or substantially owned by West Publishing Company.

22. Vernon Law Book Co., is a Missouri Corporation, with its principal place of business in Kansas City, Missouri and is a wholly-owned subsidiary of West Publishing Company.

22(a). The American Law Book Co., is a New York Corporation, with its principal place of business in the County of Kings, New York City and is a subsidiary of West Publishing Company.

23. Burdette-Smith Co., is a California Corporation, with its principal place of business in California, and is a subsidiary of West Publishing Company.

24. Washington Law Book Co., is a District of Columbia Corporation, with its principal place of business in Washington, D. C., and is a wholly-owned subsidiary of West Publishing Company.

25. Foundation Press, Inc., is a Illinois Corporation, with its principal place of business in Chicago, Illinois and is wholly or substantially owned by West Publishing Company.

26. All of the aforesaid defendants engaged in actions hereinafter complained of within the Southern District of New York and elsewhere throughout the United States and maintained offices and/or maintained agents within the Southern District of New York.

27. The aforesaid entities and other members of the Class, directly or indirectly, themselves or by the use of agents, performed the business activities within the Southern District of New York and caused damages to plaintiffs within the Southern District of New York, and as such caused violations of the statutes within the Southern District of New York.

*Applicable to All Counts*

28. The named defendant and the members of the Class of defendants are and have been engaged in the compilation, publication, printing and distribution of the law books and services, all as herein before described, to purchasers and users both on a wholesale and on a retail level. This in-

cludes distribution throughout the world, through its agents, and more particularly within the territorial limits of the United States of America, of all types and forms of law books and periodicals utilized in the legal profession and in all types of legal research whether manually or computerized.

*Count I*

29. Defendants have unlawfully agreed, combined and conspired and have conducted activities in pursuance thereof, which have tended unduly to restrain interstate trade and commerce. They have combined and conspired with each other and have attempted and have succeeded in causing monopolies in the publication and trade of law books and related periodicals and supplements, as aforesaid.

30. The defendants possess controlling and dominant positions in such industry and have exercised unlawful market control therein and have maintained monopolistic control of said industry. The unlawful activities of the defendants have had the purpose of and have excluded, interfered with, obstructed and destroyed the trade and commerce of those who would compete with them.

31. The defendants have conspired amongst themselves to refrain from competing with each other.

32. As an example thereof, the statutes of the State of New York are compiled solely by Edward Thompson Co., Inc. and no defendant offers competition to Edward Thompson Co., Inc., for such publications despite the fact that the compilation of such New York statutes is essential to almost every law office within the State of New York.

33. Such depravation [sic] of effective competition for the compilation and publication of law books throughout the

United States, has resulted in increased prices and lack of availability of free choice to the plaintiffs in the purchase of designated law books, all of which is in violation of the statutes.

*Count II*

34. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

35. As a result of the agreement and conspiracy amongst the defendants to refrain from competing with each other and as a result of the domination of that segment of the industry which includes the compilation of official reports of Court decisions from local, state and federal Courts, West Publishing Company, has attained and has continued to be the dominating and in almost every jurisdiction within the United States, the sole official compiler and publisher of official Court decisions.

36. Although in many instances the publications aforesaid are copyrighted by the companies named herein, they are published, prepared and edited by West Publishing Company with the other companies in many instances doing nothing but adding their name to the publication and registering the publication in order to deceive the public as to the true monopoly that exist by the West Publishing Company.

37. As a result of such domination and control, plaintiffs are required to purchase law books from the defendants herein and are truly publications solely by the West Publishing Company.

38. In 24 states of the United States and the jurisdiction of Washington, D.C. compilations of the decisions of that

state and jurisdiction are solely published by West Publishing Company, as well as reports for the balance of the 50 states. The defendants in the area of secondary research, that is, digests of the case law of the various states which are essential to the system available to the legal profession today to do legal research and essential to the finding of the cases reported in the official or unofficial reports exclusively published digests in 47 of the 50 states.

39. To maintain its dominating position, in the reprinting of such decisions, West Publishing Company has frequently omitted references to Court citations of Court decisions found in compilations and books produced by other publishers.

40. By such agreements and conspiracies, West Publishing Company has thus prevented free competition from other entities in the compilation and publication of such official reports of decisions with the result that plaintiffs are required to purchase official reports only from West Publishing Company and are thus, financially damaged and deprived of their free choice in the matter.

*Count III*

41. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

42. West Publishing Company directly and through its subsidiaries and controlled entities, compiles, publishes and distributes digests, encyclopedias and other research tools in the industry.

43. For the purpose of retaining its dominating position with respect to compilation and publication of decisions

and opinions of local, state and federal Courts in its official reporters, West Publishing Company, has entered into agreements and conspiracies with such other entities assuring that such research books fail to include citations of cases from other than their reports, excepting in isolated instances.

44. Such actions of West Publishing Company in combination and by agreement with its subsidiaries and controlled entities has tended to cause a monopoly on such books to West Publishing Company and such entities.

45. As a result thereof, competition has been reduced and plaintiffs have been deprived of their rights to freely deal amongst competitors, with the result that prices paid by plaintiffs for such publications have been higher than they would be otherwise.

*Count IV*

46. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

47. Defendants have abused the process and procedures of this Court by threatening to institute proceedings based on alleged copyright infringement of non-published matter to affect the economic success of the plaintiff CSSC.

48. Defendants are well aware that the plaintiff CSSC has not published any material whatsoever and there is no present alleged infringed material, which could or possibly be the basis for an action against the plaintiff CSSC for copyright infringement.

49. That as a result of this wrongful and unlawful act on the part of West Publishing Company, plaintiff CSSC

will suffer great serious and lasting injury to its trade and business aforesaid through the loss of credit; loss of actual prospective customers; loss of availability of experienced personnel; loss of profits; and loss of capital investment in its business.

*Count V*

50. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

51. Defendants are well aware that all of the copyrights and purported copyrights upon which plaintiff CSSC bases his exclusive right to the materials contained in the legal publications are invalid, unenforceable, null, void, and of no effect, and a declaratory judgment under Section 2201 and 2202 of Title 28 United States Code may and should be entered by this Court so declaring.

*Count VI*

52. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

53. Defendants have been guilty of such misuse of alleged copyrights involving legal publications and should be barred from enforcing the same in this or any other action.

*Count VII*

54. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

55. Defendants are engaged in the sale of new law books. They have agreed amongst themselves as to the various methods of eliminating and curtailing the sale of

used law books containing the self same contents, despite the lower price to the plaintiffs of such used law books.

56. From time to time, as a result of the retirement, demise or change of circumstances of users of law books, used books of equal professional and research value, become available to the plaintiffs.

57. Plaintiff in order to reduce the utilization of such used law books and to continue to dominate the sale of books through the sale of new law books, the defendants have engaged in various acts and practices, agreements and conspiracies to reduce and prevent competition of used law books with their own new law books.

58. As a result of such actions by defendants, plaintiffs have been deprived of their right to purchase law books in a free and unrestricted market place. Plaintiffs have been obstructed from and have unlawfully been deprived of their right to buy from or trade with sellers of books selected by them and at prices favorable to the plaintiffs.

59. As a result, competitive channels of distribution of law books have been substantially reduced in number, in size and in strength and they have been eliminated by the coercive activities of the defendants, from time to time. Defendants do not sell or trade in new laws books in exchange for used law books.

60. As a result, defendants have been permitted to increase the prices which they charge to the plaintiffs for such new law books and they have engaged in practices toward the elimination of the competition of sellers of used law books, both individual sellers liquidating their own libraries and also dealers of used law books.

61. Such practices of the defendants have had the result of reducing the value which used law books possess when plaintiffs wish to sell them, thus causing economic loss to those plaintiffs who have heretofore sold used law books and the same such loss to all plaintiffs with respect to the used law books presently owned and controlled by them.

*Count VIII*

62. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

63. Upon each publication of each volume of law books, defendants have placed a copyright date upon the back of the title page. In accordance with the copyright laws of the United States, such publications are afforded copyright protections for specified number of years.

64. Upon revision of such volumes by defendants in which additional material is added, defendants then amend the back of the title page and insert a new copyright date for the entire contents of the revision rather than pertaining only to the portions so revised.

65. In such manner, the defendants act to restrain competition because of the actual or implied threat of copyright violation.

66. Furthermore, in such manner, defendants are enabled to obtain for the supplements of such law books, exorbitant prices, far in excess of the values thereof, to be paid by the plaintiffs.

67. Plaintiffs are thus deprived of competition in such supplements which would tend to reduce the prices paid therefore. Plaintiffs are charged and are required to pay

prices for such supplements which are far in excess of the values thereof because defendants have excluded, interfered with, obstructed and destroyed trade and commerce in competition with them.

*Count IX*

68. Plaintiffs repeat each allegation set forth in the preceding paragraph of this complaint.

69. For the purpose of damaging plaintiffs, the defendants have entered into agreements, combinations and conspiracies amongst themselves and particularly in connection with The Lawyers Co-operative Publishing Company and West Publishing Company and further, particularly with respect to West Publishing Company with Edward Thompson Co., Inc. and West Publishing Company with The American Law Book Co., and the Class of defendants amongst each other, and further, particularly with respect to the acquisition and maintenance by West Publishing Company of its wholly-owned subsidiaries as aforesaid stated.

70. Such activities by defendants constitutes monopolistic power, combinations and conspiracies unlawfully to restrain interstate commerce in the law book industry and combinations and conspiracies to monopolize said industry, all of which defendants have accomplished to the damage to plaintiffs.

*Count X*

71. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

72. It is the nature of a certain segment of the law book industry, excepting reports of decisions of various Courts,

that supplements to make such law books current are compiled, printed and distributed by defendants to plaintiffs, from time to time.

73. Such frequent supplementation is a major source of revenue to defendants and a major expense to plaintiffs for maintaining law books in a current up-to-date condition.

74. Thus, when plaintiffs purchase said law books, they are dependent for supplements upon that particular compiler, publisher and printer, without the right or option to obtain such supplement from another entity, at lesser price.

75. The sale by defendants to plaintiffs of fill-ins of missing books from sets of law books and supplying of supplements to keep sets current is a large source of profits to defendants and is utilized by defendants to retain as captive the business from plaintiffs, at prices arbitrarily set by defendants in excess of reasonable values.

76. Defendants stifle competition from used book dealers and distributors by refusing to supply such fill-ins and supplements to such dealers for resale to persons and entities who purchase at retail. By so refusing to supply such fill-ins and supplements to dealers, defendants thus require the dealers to supply defendants with names of their retail customers, and defendants thereafter control and dominate sales of such retail customers of fill-ins and supplements thereafter, at values arbitrarily set by defendants, without compensation to such dealers.

77. As a result of their sales and distribution practices, defendants have arbitrarily, maliciously and unfairly eliminated and reduced competition from used book dealers in a

free and competitive market with the result that such dealers and other plaintiffs are deprived of their rights to deal in such free and competitive market and dealers and other plaintiffs are required to pay excessive prices for books, fill-ins and supplements.

78. By arbitrarily setting excessive prices for such fill-ins and supplements, defendants have knowingly caused reduction in value of used books, thus, damaging plaintiffs.

79. By reducing and eliminating sales by defendants to dealers for resale to retail plaintiffs and by refusing to continue trade discounts to dealers, defendants have conspired amongst themselves to reduce and eliminate use of independent dealers who would be in a position to compete for retail business with the sales staff of defendants and offer lesser prices to retail purchasers.

80. By placing such dealers at competitive disadvantages and by diminishing and eliminating their threats and further by reducing the number of dealers, defendants have tended to confine the law book business to defendants, with the result that plaintiffs have been deprived of their free choice and a free economy and have been caused to pay excessive prices because of monopolistic results.

81. To further reduce and eliminate competition and for the purpose of concentrating control of the law book industry in defendants, certain defendants acquired ownership and/or control of numerous subsidiaries, as hereinbefore set forth with respect to West Publishing Company and with respect to The Lawyers Co-operative Publishing Company. Such defendants have allowed liberal discounts to their dominated companies who are thus urged to compete unfairly against unaffiliated dealers. Such practices have tended to eliminate competition by placing the un-

affiliated dealers at competitive disadvantage and defendants have failed to fully disclose such relationships between such control companies and other defendants, to plaintiffs.

82. For the purpose of further destroying such competition and retaining monopolistic control of the market, defendants impose upon such dealers unfair and discriminatory terms which are inconsistent with fair competition and fair dealing. The result has been damage to such dealers and increased costs for law books to other plaintiffs. The purpose of such activities by defendants has been to concentrate control of the law book industry and thus be permitted to maintain excessive prices for their products, all of which they perform with the intent of controlling, dominating and eliminating competition in the compilation, publication and distribution of law books in the United States.

83. As a further method of increasing cost of law books to plaintiffs and inducing plaintiffs to purchase new books in lieu of less expensive used books, defendants use various inducements to plaintiffs to influence the purchase of new books and to discourage arrangements for the purchase of used books, thus increasing costs to plaintiffs and eliminating and destroying competition to defendants by dealers in the wholesale market.

84. As a further method of effecting such results, defendants make special deliveries of books to companies owned or controlled by them and to retail customers who purchase their law books directly from defendants, rather than those who purchase directly from dealers or who purchase used books at lesser cost and who then require fill-ins or supplements. This has unfairly tended to cause damage to such dealers and damage to other plaintiffs who purchased used books and then requested fill-ins or sup-

plements. This practice has reduced the number of plaintiffs who purchase used books at lesser cost.

85. In furtherance of their scheme and conspiracy to monopolize, defendants have denied services and information to such dealers and have further caused diminution in value of used law books by increasing the prices charged to plaintiffs to bring up-to-date those sets which have become outdated through lapsing of supplements.

*Count XI*

86. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

87. That the activities of the defendants were calculated to deceive and defruad the public at large and were made with the object of having plaintiffs and members of the Class which plaintiff seeks to represent rely on such statements and activities although defendants knew that said activities and statements were untruthful and were calculated to deceive and defraud plaintiffs and other members of the Class.

88. That if not for such activity and statements and representations made by the defendants, plaintiffs would not have purchased such books or publications and would not have been damaged thereby.

89. The aforesaid conduct of defendants was gross, willful, malicious and wanton and done with a reckless disregard for the rights of the public generally; such conduct was calculated by defendants to deceive and to defraud the public at large; it was done with a high degree of moral culpability and was part of an overall course of reckless

conduct aimed at the public at large without regard to business ethics or morals required when dealing with the members of the public.

90. Such conduct of defendants evinced a high moral turpitude for which plaintiffs seek punitive and exemplary damages from defendants in the sum of Two Hundred Million ($200,000,000.00) Dollars.

*Count XII*

91. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

92. Defendants in its applications to the Copyright Office of the United States for registration of all or most of the alleged copyrights, falsely and fraudulently concealed from said Copyright Office the fact that substantial portions of the works which defendants were seeking to register for copyright had been previously published, with or without copyright notices, by the defendants, or by other persons, corporations or by other persons, or by defendants jointly with other persons, and this despite the fact that, as defendant well knew at the times such applications were submitted to the said Copyright Office, defendant was legally obligated and required to disclose the facts as to such previous publications of such materials fully, fairly and honestly to said Copyright Office in all such applications.

93. Defendants also falsely and fraudulently misrepresented to said Copyright Office, in such applications for registrations of copyrights, that the works for which defendants so sought copyright registrations contained no previously published matter when, in truth and in fact, as defendant well knew, such works consisted in whole or in substantial part of materials and writings previously pub-

lished by defendants, or by other persons, or by defendants jointly with other persons.

94. As to such copyrights which defendants registered by means of the false and fraudulent concealments and misrepresentations alleged in paragraphs 92 and 93 above, defendants registrations of such copyrights are and were null and void, and defendants are barred, by the express provisions of Title 17 of the United States Code, Section 13, from maintaining this or any action for alleged infringements of any copyrights so fraudulently and unlawfully registered.

*Count XIII*

95. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

96. Most of all of the works which defendants filed copyrights for consisted of materials and writings that were not original, were not copyrightable, or which were simply copies from works already in the public domain. All such purported copyrights are legally null, void, and of no effect; and defendants are therefore barred from recovery upon any claim of infringement or the right to claim exclusive rights thereunder.

*Count XIV*

97. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

98. Defendants have achieved their position of extraordinary dominance in the trade or business aforesaid, and has monopolized and attempted to monopolize interstate and foreign commerce in such trade or business, and, both individually and jointly with others, has carried out and executed the unlawful plan, design, scheme and conspiracy

aforesaid, by means of the following unlawful activities, practices and overt acts, among others:

(a) By acquiring ownership interests in and control of numerous formerly competitive publishers and has stifled competitors in the field of preparing, publishing and distributing legal information material;

(b) By entering into, dictating, and enforcing the adoption of exclusive dealership agreements with itself and other companies, dividing and restricting the territories within which each such company may carry on the trade or business aforesaid, and requiring such companies to deal exclusively in the legal research materials of defendants or of such other companies as defendants may from time to time approve;

(c) By fixing the market prices of the legal research materials sold, published and distributed by defendant, its subsidiaries, and other companies, at unreasonably high and non-competitive levels;

(d) By regulating, through agreements and understandings with its subsidiaries and co-conspirators, the dates on which particular legal research materials, dealing with specific legal subject-matters, should be published or released to the public;

(e) By preventing, restricting, regulating and controlling the re-sale of legal research materials at second hand;

(f) By entering into agreements with competitive companies under which defendant and such companies agreed jointly to publish and copyright numerous volumes of legal research materials instead of publishing competitive volumes of a similar character, and otherwise restricting and impeding the compilation, preparation, manufacture, sale,

publication and dissemination of legal research materials in the commerce aforesaid;

(g) By publishing and selling numerous separately copyrighted volumes of legal research materials in single series composed of many such separately copyrighted volumes, and refusing to sell to any customer less than the entire series, so that the sale of one separately copyrighted work is conditioned upon the purchaser's agreement to purchase numerous other works, some of which may be protected by copyright and others of which ~~are not so~~ protected;

(h) By driving out of business and completely replacing the official reporters of the decisions of the Courts of twenty-four of the fifty states and securing for plaintiff the exclusive right to publish the official reports of the Courts of such states;

(i) By securing for defendant West Publishing Company a right not accorded to many, if indeed to any, of its competitors, namely: the right to obtain free copies of judicial opinions for publication (most if not all other publishers of such opinions are required to pay for such opinions);

(j) By altering the texts of the judicial opinions published by defendants, through the elimination therefrom of citations to volumes of reports of judicial decisions published by competitors of defendants, the insertion therein of citations to defendant's published reports.

99. By committing each of the acts set forth above, the defendants attempted to expand the scope and duration of defendants' copyrights beyond the term, and to cover writings not included in, the lawful scope and duration of a copyright secured under the Copyright Law of the United States.

*Appendix D*

*Count XV*

100. Plaintiffs repeat each allegation set forth in the preceding paragraphs of this complaint.

101. Defendant West Publishing Company has, for many years prior hereto, attempted to develop its own system of computerized legal research.

102. This effort on behalf of the defendant West Publishing Company has apparently not been successful to date for two major reasons:

(1) West Publishing Company has been attempting to accommodate its existing key number system to a computerized operation;

(2) West Publishing Company has sought to develop a system that would retrieve full text of decided cases, rather than solely legal citation data of the kind utilized in the Law Research Service, Inc. system.

103. In or about 1965, the Law Research Service computerized system began rapidly to gain recognition as a practical and effective method of doing legal research. At that time, the defendant West Publishing Company's computerized system was still in its initial stages of development.

104. West Publishing Company realizing that unless the natural rate of growth of Law Research Service, Inc. and computerized applications to legal research was in some way retarded, the Law Research Service system would become firmly established in the market place long before the West Publishing Company's system even became operational.

105. With full knowledge of these facts, West Publishing Company commenced an action in or about June, 1965

based on alleged infringements and that cause of action was subsequently abandoned in part.

106. In abandoning these initial allegations defendant West Publishing Company amended its complaint to allege other causes of action, some of which to this date have been abandoned.

107. The defendant West Publishing Company represented and caused others to represent to Law Research Service's customers and to the public generally, that it was about to begin marketing a computerized legal research system of its own. Defendants made these representations with the purpose, intent and design of inducing persons, firms and corporations to refuse to deal with Law Research Service, Inc.

108. Defendant also circulated, and caused and induced others to circulate to Law Research Service's customers and to the public generally, false and derogatory statements to the effect that Law Research Service provided an inaccurate, inferior and inefficient system for conducting legal research.

109. Defendants for the purpose of design of causing injury to Law Research Service and its franchisees caused The Western Union Telegraph Company and others to refuse to extend credit to Law Research Service, Inc.

110. Defendant further attempted to induce The Western Union Telegraph Co. to refrain from performing their agreements with Law Research Service, Inc.

111. Defendant through the use of litigation attempted to appropriate for its own use, the trade secrets and other proprietary information which has provided the legal pro-

fession with a modern and effective alternative method of conducting legal research, despite the fact that there was a protective order entered in the prior litigation prohibiting the defendant from inquiring into certain confidential areas.

112. Defendant attempted to use pre-trial discovery procedures to force disclosures to the defendants of valuable trade secrets and has continued overt acts by threatening to subpoena this information at the trial of the action between West Publishing Company and Law Research Service, Inc.

WHEREFORE, Plaintiff Computer Searching Service Corporation and Members of the Class of Plaintiffs pray:

(a) That a judgment be entered herein dismissing the Second Amended and Supplemental Complaint and each and every separate cause of action alleged therein;

(b) The rights of the named plaintiff and all members of the Class of Plaintiffs similarly situated, be determined;

(c) This Court direct or authorize the giving of appropriate notice to all members of the Class of Plaintiffs and to all members of the Class of defendants;

(d) Plaintiff and each member of the Class of Plaintiffs be awarded damages in accordance with the aforesaid statutes, against all members of the Class of defendants;

(e) Defendants discontinue the practices herein complained of;

(f) Plaintiff and each member of the Class of Plaintiffs be awarded exemplary damages of Two Hundred Million ($200,000,000.00) Dollars from defendants;

(g) Defendants pay the plaintiffs all expenses, costs and disbursements incident to this action, including reasonable counsel and accounting fees;

(h) Plaintiffs have such other, further and different relief as to the Court may seem just and proper.

Dated: New York, N.Y.
September 8, 1970

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